

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16993 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

DINESH NITINKUMAR JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16993 of 2004
MR HR PRAJAPATI for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1-3
M IA SHAIKH for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/02/2005

ORAL JUDGEMENT

1. By way of this Special Civil Application the

petitioner has challenged the order passed by the District Magistrate, Ahmedabad, on 13th of December, 2004, in exercise of powers conferred upon him under Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act" for short) directing the detention of the petitioner under the above Act because the District Magistrate, Ahmedabad, reached to the satisfaction that it was necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of supplies of essential commodities to the community. The petitioner came to be detained in pursuance of the above said order from 13th of December, 2003.

2. The grounds of detention as placed on record reveal that kerosene is declared to be essential commodity by the State Government and the State Government has granted subsidy on such essential commodity. It was revealed that the petitioner was Bill Clerk of Rajasthan Consumers Co-operative Society Limited and was holding a licence of fair price shop and to sell and distribute essential commodities like kerosene at subsidised rate by maintaining bill books, sale registers, accounts, etc. Mamlatar, Daskroi, checked the fair price shop of the petitioner on 4th of August, 2004 and thereafter on 23rd of August, 2004, 24th of August, 2004 and 27th of August, 2004. It was found by him that about 33 consumers quantity of kerosene to the extent of 966 liters was sold by the petitioner by preparing bills and made entries in the sale register. However, the petitioner did not make any entry in the ration card of particular ration card holder about selling the quantity of kerosene, and thereby the petitioner disposed of the quantity of 966 liters of kerosene in open market for his personal gain. In addition to this, in the month of June, July and May, 2004, as laid down by the orders of the Government, the quantity of kerosene was not distributed by the petitioner. The petitioner also failed to produce Weight and Measure certificate at the time of inspection carried out by the concerned authority. The alleged activities of the petitioner being criminal offence, a criminal case was registered against the petitioner for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, but in the said case, the petitioner was released on bail. The licence issued to the petitioner for the fair price shop also came to be suspended for 90 days. In view of the detaining authority though above measures were taken against the petitioner, but the same are not sufficient to prevent the activities of the petitioner and,

therefore, , the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PBM Act. The detaining authority, therefore, passed the above said order to detain the petitioner, which is under challenge in this petition.

3. Various grounds were urged on behalf of the petitioner by learned Advocate Mr. H.R.Prajapati to challenge the order of detention passed against the petitioner. The grounds which learned Advocate for the petitioner magnified is in respect of non-supply of copies of the basic material relied upon by the detaining authority. It was urged that in the grounds of detention, it is mentioned by the detaining authority that after verifying the bill books and sale register, above noted irregularities were noticed by the inspecting authority. According to the learned Advocate for the petitioner though with the ground of detention, copy of sale register is provided, but copies of the bill books which were seized during inspection and relied upon by the detaining authority, were not supplied to the detenu, which results in further detention of the petitioner illegal.

4. The affidavit-in-replies filed by the detaining authority, the Deputy Secretary, State of Gujarat, and the Under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi, as placed on record, are also taken into consideration.

5. Learned AGP Mr. Prachchhak, having opposed all the contentions raised by learned Advocate for the petitioner, vehemently urged that the relevant material, which is a sale register and relied upon by the detaining authority, copies of the same are admittedly supplied to the detenu. It is urged that the substantive allegation against the detenu is though the detenu made entries in the sale register and prepared bills, did not distribute quota of kerosene to ration card holders because no entries in this respect was made in any of the ration cards in question. Learned AGP after drawing the attention of this Court to the affidavit filed by the detaining authority submitted that the substantive allegation about the non-supply of quota of kerosene to card holders could be derived from the sale register and particular ration cards. Learned AGP also submitted that copies of the sale register and the copies of each of the ration cards were made available to the petitioner, which were relied upon by the detaining authority when the order came to be passed. Learned AGP further stated that

the contention that non-supply of copies of bill books prepared by the petitioner and seized by the inspecting authority would not vitiate the further detention. It was urged that the petition be dismissed.

6. Having heard learned counsels of the parties at length, it appears that this petition can be examined and disposed of on the sole issue that whether the further detention of the detenu is vitiated on account of non-supply of copies of the bill books.

7. It is necessary here first to refer to a decision of the Division Bench of this Court in the matter of BUDHABHAI SOMABHAI PARMAR vs. DISTRICT MAGISTRATE, KHEDA AND ORS, as reported in 1989 (1) GLR 325. In similar circumstances, the Division Bench of this Court after relying upon a decision of the Apex Court in the matter of HANSMUKH vs. STATE OF GUJARAT AND ORS., as reported in AIR 1981 SC 28, observed that, in that case the primary material would be the books of accounts and other records maintained by the detenu while running the fair price shop and the reports of the subordinate officers, etc. cannot be said to be the basic facts containing the grounds of detention. In para 8 the Court observed as under :

"8. However, the learned Counsel for the petitioner is on a stronger footing when he has pointed out that copies of bill books which have been referred to in the grounds of detention and in respects of which irregularities and illegalities are alleged to have been committed are not supplied to the detenu. It could not be disputed by the learned Counsel for the respondents that the copies of the bill books in respect of pamoline oil, sugar, wheat and rice, that is the commodities in question, have not been supplied to the detenu. On going through the grounds of detention it is evident that there is profuse reference to bill books in respect of the aforesaid commodities. It is also clear that the bills are the primary material from which the entries will be posted in the stock register. While distributing the essential commodities, the first document to be prepared would be bill. Whether the bill books were blank or written or they were written falsely is altogether a different question. Had the copies of bill books, in whatever form they were, been supplied to the detenu, he would have certainly been able to make his representation effectively. If the

bill books were blank, on one piece of paper this could have been written and the supply of such piece of paper giving details about the bill books and containing the remark 'blank' would be considered sufficient compliance. Since the very alleged illegal activities were in respect of bill books and the maintenance of stock register, it has got to be held, in the facts and circumstances of the case, that bill books did form part of basic facts constituting the offence and the alleged prejudicial activities. Therefore, it has to be included in the term 'grounds' which occurs in Art. 22(5) of the Constitution of India and also in Sec. 8 of the Act.

8. True it is that, the entries are made in sale register by the detenu and the copies of the same are provided to the detenu. True it is also that, the sale register is the relevant document. It is also true that from the entries made in the sale register and not made in the ration cards, the irregularities committed by the petitioner can obviously be noticed, but in the instant case, the question is in respect of the violation of the right of the petitioner as guaranteed under Article 22(5) of the Constitution of India. If the matter is viewed from this angle, it becomes clear that it is the bill book which is a basic material, upon which the detaining authority placed reliance. This is so because the entries in the sale register by the petitioner are made from the bill books and hence the bill book is a basic material from which sale register is prepared. The Division Bench in the matter of Budhabhai (supra) also observed that whether said bill books were blank or written or they were written falsely was altogether a different question. Had the copies of the bill books been supplied to the detenu, he would have certainly been able to make his representation. It could be said therefore without hesitation that the basic material which the detaining authority took into consideration were bill books and sale register, and non-supply of the copies of the bill books referred to and relied upon in the grounds of detention, affects the right of making representation of the petitioner, as envisaged by Article 22(5) of the Constitution for India. In the present case, undoubtedly, copies of the bill books are not supplied to the detenu, affecting his right to make representation effectively. The order under challenge therefore is required to be set aside on this ground alone.

9. In the result, the petition is allowed. The order passed by the District Magistrate, Ahmedabad City, on 13.12.2004, against the petitioner in exercise of powers under Section 3(1) of the PBM Act is hereby quashed and set aside. The detenu Dinesh Nitinkumar Jain is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair